

**RESOLUTION OF THE PLANNING COMMISSION
OF THE COUNTY OF HUMBOLDT**

Resolution Number: 23-

Record Number: PLN-11919-CUP

Assessor's Parcel Number: 314-191-014

Resolution by the Planning Commission of the County of Humboldt certifying compliance with the California Environmental Quality Act and conditionally approves the Jesse Carnes Conditional Use Permit request.

WHEREAS, Jesse Carnes submitted an application and evidence in support of approving a Conditional Use Permit for the continued operation of an existing 22,000-square-foot outdoor cannabis cultivation that includes up to 2,200 square feet (SF) of ancillary propagation. Irrigation water is sourced from a 700,000-gallon rainwater catchment pond. Annual water usage is 175,000 gallons and there will be a total of 715,000 gallons of water storage on-site in the pond and a series of hard-sided tanks. Processing with a trim machine occurs onsite. A maximum of two (2) people may be onsite during peak operations. Power is provided by two (2) generators; however, the applicant has long-term plans to switch to solar power; and

WHEREAS, the County Planning Division, the lead agency, prepared an Addendum to the Final Mitigated Negative Declaration (MND) prepared for the Commercial Medical Land Use Ordinance (CMMLUO) adopted by the Humboldt County Board of Supervisors on January 26, 2016. The proposed project does not present substantial changes that would require major revisions to the previous Mitigated Negative Declaration. No new information of substantial importance that was not known and could not be known at the time was presented as described by §15162(c) of CEQA Guidelines; and

WHEREAS, the Humboldt County Planning Commission held a duly-noticed public hearing on January 5, 2023, and reviewed, considered, and discussed the application for a Conditional Use Permit and Special Permits, and reviewed and considered all evidence and testimony presented at the hearing.

Now, THEREFORE BE IT RESOLVED, that the Planning Commission makes all the following findings:

1. FINDING

Project Description: The application is a Conditional Use Permit to allow the continued operation of an existing 22,000 square foot (SF) outdoor cannabis cultivation that includes up to 2,200 square feet (SF) of ancillary propagation . Irrigation water is sourced from a 700,000-gallon rainwater catchment pond. Annual water usage is 175,000 gallons and there will be a total of 715,000 gallons of water storage on-site in the pond and a series of hard-sided tanks. Processing with a trim machine occurs onsite. A maximum of two (2) people may be onsite during peak operations. Power is provided by two (2) generators; however, the applicant has long-term plans to switch to solar power.

EVIDENCE

Project File: PLN-11919-CUP

2. FINDING

CEQA. The requirements of the California Environmental Quality Act have been complied with. The Humboldt County Planning Commission has considered the Addendum to and the Mitigated Negative Declaration (MND) prepared for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) adopted by the Humboldt County Board of Supervisors on January 26, 2016.

EVIDENCE

- a) Addendum prepared for the proposed project.
- b) The proposed project does not present substantial changes that would require major revisions to the previous MND. No new information of substantial importance that was not known and could not be known at the time was presented as described by §15162(c) of CEQA Guidelines.
- c) A Water Resource Protection Plan (WRPP; WDID 1B16444CHUM) was prepared by Timberland Resource Consultants for the subject site in August 2016 with NCRWQCB Order No. R1-2015-0023, and a Notice of Applicability (NOA; WDID 1_12CC419185) was submitted by the applicant to show compliance with the State Water Board Cannabis General Order for Waste Discharge. The project is conditioned to require the applicant prepare and submit a Site Management Plan (SMP); implement the requirements of the SMP, WRPP, and NOA; and maintain enrollment in the Cannabis General Order for the life of the project.
- d) California Department of Fish and Wildlife Resource Maps indicate the northeastern cultivation area is located within and the southern cultivation area is located immediately adjacent to potential habitat for the North American porcupine (*Erethizon dorsatum*). A review of the California Natural Diversity Database (CNDDB) Spotted Owl Observation Database in August 2022 showed that Northern Spotted Owl habitat exists in the vicinity and the nearest activity center is located approximately 0.37 miles from the nearest cultivation area, with the nearest NSO sighting located approximately 0.29 miles away. Power for the project is provided by two (2) Honda generators, which are utilized for project activities between March and May, and between August and November. The applicant has long term plans to switch to solar power, and conditions of approval require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026.

Comments were received from CDFW in September 2017, which requested a qualified biologist conduct appropriate surveys in all areas that may be potentially impacted by the project; requested protocol level surveys (two-year) by an experienced wildlife biologist to determine NSO presence or assume presence and modify the project to exclude mixed-light cultivation to avoid disturbance of habitat. The applicant clarified the mixed light cultivation was misidentified and all cultivation is outdoor. Artificial lighting would only be used for propagation. With the cultivation method being outdoor and the inclusion of the noise and light attenuation measures, Planning staff assumed presence of NSO, therefore, no protocol surveys are required. CDFW requested the applicant provide a Bullfrog management Plan to CDFW due to the onsite pond, which is included as a condition and also. condition the project to ensure that cultivation is relocated a minimum of 150 feet from the pond. In follow up comments received in May 2019, CDFW requested a wetland delineation, as cultivation appears to be located immediately adjacent to an identified “natural pond”, which CDFW interprets as a wetland. Additionally, CDFW requested inclusion of standard noise and light attenuation measures to minimize potential impacts on biological resources, including NSO.

An Aquatic Resources Delineation was performed by Kyle Wear, Botanical Consultant, in December 2021 to assess the subject site for wetlands and other aquatic resources. Per the Report, the lower terrace, which is mapped as Riverine (R3USC) in USFWS’ National Wetlands Inventory and the Humboldt Web GIS, was determined not to be Riverine habitat or include wetlands. It is noted to be the historic channel of the Mad River, but is expected to have surface water only during a severe flood event. While portions of the terrace have hydrophytic vegetation, there are no indicators of hydric soil or wetland hydrology. According to the Aquatic Resources Delineation and the site plan, the cultivation areas and associated infrastructure are located 100 feet or more from the Mad River and the natural pond, which is consistent with required setbacks described by the Streamside Management Area and Wetlands Ordinance (SMAWO). No recommendations are provided in the Report. An email dated October 27, 2022, was sent to CDFW that included the wetland delineation. No additional comments were received on the report. On December 14, 2022, Planning staff received an email from CDFW that indicated the Final SAA is expired and the applicant will need to notify CDFW to continue use of the surface water diversions (see Attachment 5E). The project is conditioned to require the applicant continue comply with all requirements of the Final SAA and comments received from CDFW dated December 14, 2022, requiring the applicant to extend the CDFW Agreement.

Noise and light attenuation measures are required for the project, including requiring noise to be at below 50 decibels at 100 feet which is below the guidance established by the California Department of Fish and Wildlife for

protection of the species. Generators are also required to be located at least 200 feet from the onsite streams and placed within noise containment structures. Additionally, the applicant is required to ensure all lighting meets International Dark Sky Association standards. Conditions of approval also require the applicant to refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage and refrain from using anticoagulant rodenticides to further protect wildlife. In addition, due to the on-site pond, the applicant is required prepare and comply with a Bullfrog Management Plan to monitor and manage bullfrogs, as requested by CDFW. As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively impact NSO or other sensitive species.

- e) The lower portion of subject site is within a FEMA mapped 100-year flood zone. The existing project will not alter the existing flood area, does not propose any new residential or civic uses, and will not result in any hazardous industrial uses within the existing flood zone. Agriculture is an allowable use in flood zones. The proposed project will not store hazardous or acutely hazardous materials on site that could be cause for environmental harm during a flooding event. The project site is approximately 16 miles east of the coast, and approximately 370 feet above mean sea level, thus, is outside the areas subject to tsunami run up. Lastly, although the project site is within a mapped dam or levee inundation area, the activities proposed as described herein would not contribute to increased development risk as this is a non-industrial operation focused on seasonal operations between spring and early fall months outside of the rainy season.

The lower cultivation area (Cultivation Area 2) is comprised of metal-framed hoophouses with garden beds. All other structures and equipment associated with the operation (generators and where fertilizers and amendments are stored) are located on the upper terrace and outside of the flood zone. According to the Water Resources Protection Plan and confirmed by the applicant at the site visit on December 22, 2022, there are no pesticides or herbicides used for the operation or approved for commercial cannabis use in general. There is small amount of fuel storage on the upper terrace in a shed that is required to have secondary containment per State Water Board requirements. Plants are irrigated using drip irrigation to conserve water and decrease any run-off. According to the applicant, a natural material is used to line the base of the beds to minimize soil and water loss. An annual inspection was performed by County staff on October 19, 2021, and it was noted each structure related to cannabis may need to conform to County flood elevation standards or be completely removed during the wet season. Condition of approval require the hoophouses to be removed from the site between October 16th and April 14th. Alternatively, the applicant can submit a Flood Elevation Certificate to the Building Department to demonstrate what height would be required to the raise the

hoophouses out of the flood zone. The applicant would need to meet any additional flood-proofing requirements for the structures to remain.

- f) The cultivation of cannabis will not result in the net conversion of timberland. Review of historic aerial imagery dating back to 2004 indicates the subject property contained open areas within the southeastern and northeastern portions of the property dating back to this time, and that the southern cultivation area occurs within a historic open area. However, it appears that timber removal occurred onsite between 2005 and 2009 within the northeastern and central portions of the site, and between 2010 and 2012, 2012 and 2014, and 2018 and 2020 within the northeastern portion of the site to accommodate cultivation. No additional tree removal is proposed or authorized by this permit. The project is conditioned to require the property be evaluated by a Registered Professional Forester (RPF) to determine the amount of timber conversion that occurred prior to and after the CMMLUO baseline date of January 1, 2016, and obtain a Timber Conversion Report from a RPF and/or a Less Than Three Acre Conversion Exemption or Timber Conversion Permit from CalFire, as determined necessary by the RPF, to address previously unpermitted timber conversion. The applicant/owner will be responsible for mitigating the environmental impacts not analyzed in the environmental document prepared for the CMMLUO. The applicant/owner shall be required to re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date at a rate of 3:1. Additionally, the project is conditioned to require preparation of a Restocking Plan within one year of project approval and implement the Restocking Plan within a period of two (2) years, should any timber conversion be determined to have occurred after the CMMLUO baseline date. The Restocking Plan shall include details on the locations and total areas to be restocked, the type, number, and spacing of the plantings, and a monitoring plan for three (3) years which includes performance evaluations, performance standards, and contingency measures should performance standards not be met. The Report shall include monitoring and reporting requiring a minimum of 3 years of monitoring at an 85% success rate and submission of annual monitoring reports at the time of the annual inspection.
- g) A Cultural Resources Investigation Report was prepared by Arsenault and Associates (not dated) for the subject property. Background research, outreach to the Native American Heritage Commission (NAHC) and local Tribal Historic Preservation Officers (THPOs), and an intensive systematic and intuitive pedestrian survey of the study area were conducted in November 2017. As noted in the Report, due to the slope of the study area and its location near several major confluences and known village sites, there was a reasonable expectation that the field investigation would identify cultural resources. However, no cultural resources were identified during the site survey, and, as a result, the Report concludes the proposed project will not result in any adverse change to historical or archaeological resources. The Report recommends inclusion of the Inadvertent Discovery Protocol in the event of inadvertent discovery of any resources onsite, also

recommended by the Bear River Band of the Rohnerville Rancheria in December 2017, which is included as an ongoing condition of approval.

- h) Access to the site and two cultivation areas is via two driveways off Black Creek Road (which traverses the site) to Butler Valley Road to Fickle Hill Road. Butler Valley Road and Fickle Hill Road are maintained by the County and are included on the County's list of County-maintained roads that meet (or are equivalent to) road Category 4 standards for cannabis projects. Black Creek Road is privately maintained. A Road Evaluation Report was prepared by the applicant in January 2018 (Attachment 3) for a 7.6-mile segment of Butler Valley Road from Butler Valley Road (at its intersection with Fickle Hill Road) to Black Creek Road and for a 1.4-mile segment of Black Creek Road from its intersection with Butler Valley Road. Per the Report, both road segments were noted to be developed to the equivalent of a road Category 4 standard. .

There is an informal Road Maintenance Association for Black Creek Road. A condition is included requiring the applicant to continue to participate in the informal Road Maintenance Association for the maintenance of the privately maintained portions of Black Creek Road to the project site located on Assessor's Parcel Number (314-191-014). The applicant shall provide evidence, including notice, meeting minutes, and the decision as to whether a formal Road Maintenance Association is formed. In the event the formal formation of a Road Maintenance Association does not occur, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road. The applicant shall keep any receipts for payments made for road maintenance on-site and available upon request at the annual inspection. This condition is on-going for the life of the project.

FINDINGS FOR CONDITIONAL USE PERMIT

- 3. FINDING** The proposed development is in conformance with the County General Plan, Open Space Plan, and the Open Space Action Program.

- EVIDENCE** a) General agriculture is a use type permitted in the Timberland (T) land use designation. The proposed cannabis cultivation, an agricultural product, is within land planned and zoned for timberland uses. However, the use of the property for cannabis cultivation is consistent with the use of Open Space land for managed production of resources. Therefore, the project is consistent with and complimentary to the Open Space Plan and its Open Space Action Program.

- 4. FINDING** The proposed development is consistent with the purposes of the existing Timberland Production Zone (TPZ) zone in which the site is located.

- EVIDENCE** a) The Timberland Production Zone or TPZ Zone is intended to be applied to areas of the County in which primary uses include the growing and harvesting of timber and timber production facilities, including portable processing equipment. Compatible uses other than the direct growing,

harvesting, and portable processing of timber include grazing and other agricultural uses.

- b) All general agricultural uses are principally permitted in the TPZ zone.
- c) Humboldt County Code section 314-55.4.8.2.2 allows cultivation of up to 43,560 square feet of existing outdoor cannabis and up to 22,000 square feet of existing mixed-light cannabis on a parcel over 1 acre subject to approval of a Conditional Use Permit and a determination that the cultivation was in existence prior to January 1, 2016. The application for 22,000 square feet of cultivation on a 62-acre parcel is consistent with this and with the cultivation area verification prepared by the County.

5. FINDING

The proposed development is consistent with the requirements of the CMMLUO Provisions of the Zoning Ordinance.

EVIDENCE

- a) The CMMLUO allows existing cannabis cultivation to be permitted in areas zoned TPZ (HCC 314-55.4.8.2.2).
- b) The parcel was created in compliance with all applicable state and local subdivision regulations, as it was created by an approved and recorded Parcel Map (Lot 16 of Parcel Map 2482, Book 22 of Parcel Maps, Page 43).

Water for irrigation is provided by an approximately 700,000-gallon rainwater catchment pond. Existing available water storage is 715,000 gallons in the pond and three (3) 5,000-gallon hard-sided tanks. Based on the pond's surface area of 17,000 SF, and an average rainfall amount of 56.97 inches, the pond's potential capture amount totals approximately 600,464 gallons per year, on average. The potential annual rainfall catchment amount (600,464 gallons) equates to approximately 343% (or more than three times) of the annual water amount utilized by the project (175,000 gallons). As such, Planning staff believes there will be sufficient water captured within the existing pond, even during below-average rainfall years, and in storage to adequately serve the project. Conditions of approval require the applicant to monitor water use from the pond and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs.

- d) Access to the site and two cultivation areas is via two driveways off Black Creek Road (which traverses the site) to Butler Valley Road to Fickle Hill Road. Butler Valley Road and Fickle Hill Road are maintained by the County and are included on the County's list of County-maintained roads that meet (or are equivalent to) road Category 4 standards for cannabis projects. Black Creek Road is privately maintained. A Road Evaluation Report was prepared by the applicant in January 2018 (Attachment 3) for a 7.6-mile segment of Butler Valley Road from Butler Valley Road (at its intersection with Fickle Hill Road) to Black Creek Road and for a 1.4-mile segment of Black Creek Road from its intersection with Butler Valley Road. Per the Report, both road segments were noted to be developed to the

equivalent of a road Category 4 standard.

There is an informal Road Maintenance Association for Black Creek Road. A condition is included requiring the applicant to continue to participate in the informal Road Maintenance Association for the maintenance of the privately maintained portions of Black Creek Road to the project site located on Assessor's Parcel Number (314-191-014). The applicant shall provide evidence, including notice, meeting minutes, and the decision as to whether a formal Road Maintenance Association is formed. In the event the formal formation of a Road Maintenance Association does not occur, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road. The applicant shall keep any receipts for payments made for road maintenance on-site and available upon request at the annual inspection. This condition is on-going for the life of the project.

- e) The slope of the land where cannabis will be cultivated is less than 5%, as described in the Water Resource Protection Plan (WRPP; WDD 1B16444CHUM) prepared by Timberland Resource Consultants in August 2016.
- f) The cultivation of cannabis will not result in the net conversion of timberland. Review of historic aerial imagery dating back to 2004 indicates the subject property contained open areas within the southeastern and northeastern portions of the property dating back to this time, and that the southern cultivation area occurs within a historic open area. However, it appears that timber removal occurred onsite between 2005 and 2009 within the northeastern and central portions of the site, and between 2010 and 2012, 2012 and 2014, and 2018 and 2020 within the northeastern portion of the site to accommodate cultivation. No additional tree removal is proposed or authorized by this permit. The project is conditioned to require the property be evaluated by a Registered Professional Forester (RPF) to determine the amount of timber conversion that occurred prior to and after the CMMLUO baseline date of January 1, 2016, and obtain a Timber Conversion Report from a RPF and/or a Less Than Three Acre Conversion Exemption or Timber Conversion Permit from CalFire, as determined necessary by the RPF, to address previously unpermitted timber conversion. The applicant/owner will be responsible for mitigating the environmental impacts not analyzed in the environmental document prepared for the CMMLUO. The applicant/owner shall be required to re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date at a rate of 3:1. Additionally, the project is conditioned to require preparation of a Restocking Plan within one year of project approval and implement the Restocking Plan within a period of two (2) years, should any timber conversion be determined to have occurred after the CMMLUO baseline date. The Restocking Plan shall include details on the locations and total areas to be restocked, the type, number, and spacing of the plantings, and a monitoring plan for three (3) years which includes performance evaluations, performance standards, and contingency measures should performance

standards not be met. The Report shall include monitoring and reporting requiring a minimum of 3 years of monitoring at an 85% success rate and submission of annual monitoring reports at the time of the annual inspection.

- g) The location of the cultivation complies with all setbacks required in Section 314-55.4.11.d. It is more than 30 feet from any property line (as indicated on the Site Plan) and more than 600 feet from any school, church, public park or Tribal Cultural Resource.

6. FINDING

The cultivation of 22,000 square feet of cannabis cultivation and the conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.

EVIDENCE

- a) The site is located on road that has been certified to safely accommodate the amount of traffic generated by the proposed cannabis cultivation. The project is conditioned to maintain all driveways and private road intersections onto the County road in accordance with the County's Sight Visibility Ordinance (County Code §341-1).
- b) The site is in a rural part of the County where the typical parcel size is over 13 acres and many of the land holdings are very large. The proposed cannabis will not be in a location where there is an established neighborhood or other sensitive receptor such as a school, church, park or other use which may be sensitive to cannabis cultivation. Approving cultivation on this site and the other sites which have been approved or are in the application process will not change the character of the area due to the large parcel sized in the area.
- c) Irrigation water will come from an existing 700,000-gallon natural, off-stream pond.
- d) Power is currently provided by two (2) Honda generators; however, the applicant has long-term plans to switch to solar power. To reduce impacts associated with NSO, greenhouse gases, and wildfire, the conditions of approval require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026. In addition, the use of fire-resistant materials shall be utilized when constructing the generator containment structures.
- e) Provisions have been made in the applicant's proposal to protect water

quality and thus runoff to adjacent property and infiltration of water to groundwater resources will not be affected.

7. FINDING The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

EVIDENCE a) The parcel was not included in the housing inventory of Humboldt County's 2019 Housing Element, but is currently developed with an existing residence. The approval of cannabis cultivation on this parcel will not conflict with the ability for the existing residence to continue to be utilized on this parcel.

8. FINDING Approval of this project is consistent with Humboldt County Board of Supervisors Resolution No. 18-43 which established a limit on the number of permits and acres which may be approved in each of the County's Planning Watersheds.

EVIDENCE The project site is located in the Mad River Planning Watershed, which under Resolution 18-43 is limited to 334 permits and 115 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 75 permits and the total approved acres would be 28.18 acres of cultivation.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Humboldt County Planning Commission does hereby:

- Adopt the findings set forth in this resolution; and
- Conditionally approves the Conditional Use Permit for Jesse Carnes, based upon the Findings and Evidence and subject to the conditions of approval attached hereto as Attachment 1A and incorporated herein by reference; and

Adopted after review and consideration of all the evidence on January 5, 2023.

The motion was made by COMMISSIONER _____ and second by COMMISSIONER _____ and the following ROLL CALL vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
DECISION:

I, John Ford, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above-entitled matter by said Commission at a meeting held on the date noted above.

John Ford, Director
Planning and Building Department